

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0578

IN THE MATTER OF

GEORGE H. AND GLORIA A. SOARES
LOG HAVEN DAIRY
KINGS COUNTY

This Complaint is issued to George H. and Gloria A. Soares (hereinafter Discharger) pursuant to California Water Code (CWC) section 13268, which authorizes the imposition of Administrative Civil Liability (ACL) and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that indicate that the Discharger failed to submit technical reports pursuant to an Order issued by the Regional Water Quality Control Board, Central Valley Region under the authority of CWC section 13267.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (hereinafter Central Valley Water Board) finds, with respect to the Discharger's acts, or failure to act, the following::

1. The Discharger owns and operates the Log Haven Dairy (Dairy) located at 7755 Fargo Avenue, Hanford, California, County of Kings.
2. The Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (hereinafter General Order), which was issued by the Central Valley Water Board on 3 May 2007. (Exhibit A.) The General Order contains reporting requirements for dairies regulated by the General Order. The General Order became effective on 9 May 2007.
3. The General Order required regulated facilities to submit a Waste Management Plan (WMP) by 1 July 2009. The General Order was amended by Order R5-2009-0029 to modify the compliance schedule, extending the deadline to submit the WMP to 1 July 2010 in order to give regulated parties additional time to come in to compliance. The WMP is required to have the following components: a retrofitting plan, with schedule, needed to improve storage capacity, flood protection, or design of production area; maps of the production area and land application area; a wastewater storage capacity evaluation; a flood protection evaluation; a production area design/construction evaluation; and documentation that there are no cross connections.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

4. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

5. Pursuant to CWC section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharge or discharging, or who proposes to discharge waste within its region..., shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
6. Pursuant to CWC section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
7. Pursuant to CWC section 13268, subdivision (b)(1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation or subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

ALLEGED VIOLATIONS

8. On 16 August 2010, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the Waste Management Plan with appurtenant components had not been received. (Exhibit B.) The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
9. Central Valley Water Board's compliance tracking system and case files indicate that the Board has not received the Waste Management Plan.
10. The Discharger is alleged to have violated the following sections of the General Order:
 - A) Provision E.13 of the General Order, which states in part:

"The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer."
 - B) Required Reports and Notices H.1.b of the General Order, which states in part:

"The Discharger shall submit a Waste Management Plan for the production area of the dairy facility, prepared in accordance with Attachment B. The Waste Management Plan shall provide an evaluation of the existing milk cow dairy's design, construction, operation, and maintenance for flood protection and waste containment."

11. The Discharger violated the General Order by failing to submit the Waste Management Plan as directed by the General Order.

SUMMARY OF ALLEGED VIOLATIONS

1. **Violation No. 1:** The Discharger failed to submit a Waste Management Plan by 1 July 2010 as required by the General Order and as amended by Order R5-2009-0029. As of the date of this Complaint this report is now 308 days late.

The Discharger has been out of compliance for a total of 308 days.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

12. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf.

13. The administrative civil liability was derived from the use of the penalty methodology in the Policy. In summary, this penalty assessment is based on a consideration of the failure to respond to requests made pursuant to CWC section 13267, subdivision (b), for Violations 1 through 3. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

Violations under Water Code section 13267 are assessed on a per day basis. However, the violations at issue are primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy. The failure to submit a waste management plan does not cause daily detrimental impacts to the environment or the regulatory program. It is appropriate to assess daily penalties for the first thirty (30) days, plus one violation for each additional thirty-day period. For Violation 1, the days fined is reduced to 16 days (Attachment B).

The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A and shown in the Penalty Calculation for Civil Liability (Attachment B).

14. The maximum penalty for the violations described above is \$308,000 based on a calculation of the total number of per-day violations times the statutory maximum penalty (308 total days of violation X \$1000). However, based on consideration of the above facts and after applying

George H. & Gloria A. Soares

Log Haven Dairy

Kings County

the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **six thousand six hundred dollars (\$6,600)** for the violation cited above. The specific factors considered in this penalty are detailed in Attachment A. The Discharger's culpability, history of violations, and ability to pay and continue in business were considered, but did not change the amount of liability. Other factors as justice may require were considered, but circumstances warranting an adjustment under this step were not identified by staff or provided by the Discharger.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The Executive Officer proposes that the Discharger be assessed an administrative civil liability pursuant to Water Code sections 13323 and 13268 in the amount of **six thousand six hundred dollars (\$6,600)** for failure to submit the Waste Management Plan by the 1 July 2010 deadline as required by the General Order.

The Executive Officer proposes that the amount of the assessed administrative liability (\$6,600) may be reduced provided the Discharger submits a complete Waste Management Plan. The amount of the assessed civil liability shall be reduced by \$2,000 if the Waste Management Plan is received by **20 June 2011** and which the Executive Officer finds complete. The total adjustment to the liability amount will not exceed \$2,000.

If a panel of the Central Valley Water Board holds a hearing, it may choose to recommend to the Central Valley Water Board the imposition of administrative civil liability in the amount proposed, in a higher or lower amount, or it may decline to seek civil liability, or it may recommend referral of the matter to the Attorney General for enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with the General Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the General Order and/or future orders issued by the Central Valley Water Board.

5/5/11
Date

Pamela C. Creedon
for Pamela C. Creedon
Executive Officer
Central Valley Water Board Prosecution Team

WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent George H. and Gloria A. Soares (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2011-0578 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. *(Check one of the boxes below if the Discharger will waive its right to a hearing and either [Box 1] accept the proposed liability amount of six thousand six hundred dollars (\$6,600) in full or [Box 2] accept an adjusted amount of proposed liability subject to timely submission of the required report)* I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint

☐ **[Box 1]** I certify that the Discharger will be liable for **six thousand six hundred dollars (\$6,600) in full** and will submit this signed waiver and full payment by check, which will contain a reference to "ACL Complaint R5-2011-0578" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account" by **6 June 2011**

☐ **[Box 2]** I certify that the Discharger will be liable for the adjusted amount of proposed liability if the Discharger submits the following document by **20 June 2011**:

— a complete Waste Management Plan.

The amount of the assessed civil liability shall be reduced by two thousand dollars (\$2,000) for each report described above that is received by **20 June 2011** and which the Executive Officer finds complete.

In addition to the reports, the Discharger shall also remit payment of the adjusted liability amount, by check, which will contain a reference to "ACL Complaint R5-2011-0578" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board along with the reports described above by **20 June 2011** or this matter will be placed on the Central Valley Water Board's agenda for consideration at the **14/15 July 2011** Hearing Panel.

I understand that payment of the **liability amount** either in full or in the adjusted amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

4. ☐ *(Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)* I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint but reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
5. ☐ *(Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. Attach a separate sheet with the amount of additional time requested and the rationale.)* I hereby waive any right the Discharger may have to a hearing before the Central Valley

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Kings County

Water Board within 90 days after service of the complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

6. If a hearing on this matter is held, the Hearing Panel will consider whether it should recommend to the Central Valley Water Board the issuance of an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or rejecting the proposed liability, or it may recommend referral of the matter to the Attorney General for enforcement.

(Print Name and Title)

(Signature)

(Date)

EXHIBIT A

Waste Discharge Requirements General Order for Existing Milk Cow Dairies
Order R5-2007-0035

can be viewed at:

[http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/
r5-2007-0035.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2007-0035.pdf)

EXHIBIT B

Notice of Violation Issued 16 August 2010
For Failure to Submit Waste Management Plan



California Regional Water Quality Control Board
Central Valley Region

Katherine Hart, Chair



Arnold
Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental
Protection

1685 E Street, Fresno, California 93706
(559) 445-5116 • Fax (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>

NOTICE OF VIOLATION

FILE

16 August 2010

George H. & Gloria A. Soares
Log Haven Dairy (owner/operator)

[REDACTED]
Sacramento, CA 95831

POTENTIAL ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO SUBMIT WASTE MANAGEMENT PLAN, LOG HAVEN DAIRY, 7755 FARGO AVENUE, WDID 5C16NC00026, KINGS COUNTY

The dairy facility identified above is covered under Order No. R5-2007-0035, Waste Discharge Requirements General Order for Existing Milk Cow Dairies (General Order). The General Order required that a Waste Management Plan (WMP) be submitted for regulated facilities by 1 July 2010, including the following: 1) Retrofitting plan, with schedule, needed to improve storage capacity, flood protection, or design of the production area; 2) Production area and land application area maps (facility information); 3) Wastewater storage capacity evaluation; 4) Flood protection evaluation; 5) Production area design/construction evaluation; and 6) Documentation that there are no cross connections. Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff have not received these items.

The General Order-required reports, including those due on 1 July 2010, are requested pursuant to California Water Code (CWC) §13267. CWC §13268 provides that failure to submit the required reports can subject you to administrative civil liability (monetary penalties) at a rate of up to \$1,000 for each day each report is late or substantially incomplete, if imposed by the Regional Water Board, or at a rate up to \$5,000 for each day a report is late or substantially incomplete, if imposed by the superior court. It is important that you promptly provide the Central Valley Water Board with the reports required by the General Order that were due by 1 July 2010, to minimize your potential liability.

Please contact Jorge Baca at (559) 445-6076 if you have any questions regarding this matter.

Dale E. Essary

DALE E. ESSARY
Lead Associate
Dairy Compliance Unit

**Attachment A – ACL Complaint No. R5-2011-0578
Specific Factors Considered – Civil Liability
Log Haven Dairy (Complaint)**

Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

1. **Violation No. 1. (Failure to submit a Waste Management Plan):** In accordance with the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order) and amended order R5-2009-0029, a Waste Management Plan for regulated facilities must be submitted by 1 July 2010. To date, George H. and Gloria A. Soares (hereinafter Discharger) have not submitted this Plan for the Log Haven Dairy.

Calculation of Penalty for Failure to Submit a Waste Management Plan

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.30.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to develop and submit a Waste Management Plan does not itself threaten water quality. The deviation from requirements was determined to be major, as the requirement to develop a Waste Management Plan for the operational portions of the Dairy facility has been rendered ineffective. The failure to submit the required Waste Management Plan undermines the Regional Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the General Order.

Initial Liability

A failure to submit a Waste Management Plan is punishable under CWC 13268(b)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a Waste Management Plan by the 1 July 2010 deadline as required by the General Order, which is now 308 days late.

Attachment A – ACL Complaint No. R5-2011-0578

The alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit a Waste Management Plan addressing the management of waste does not cause a daily detrimental impact to the environment or the regulatory program and it does not result in an economic benefit that can be measured on a daily basis. It is the extended time period of non-compliance that causes the detrimental impact to both the environment and the regulatory program. The Discharger receives a single economic benefit in cost saved in not developing the report, and not a per-day benefit during the entire period of violation.

Applying the per day factor to the adjusted number of days of violation rounded to the nearest full day equals 16 days of violation. This yields an initial liability of \$4,800 (0.3 per day factor X 16 adjusted days of violation X \$1000 per day penalty).

Step 4. Adjustment Factors

a) *Culpability: 1*

Discussion: The Discharger was given the neutral score of 1, which neither increases nor decreases the fine.

The Discharger is fully responsible for failure to submit a Waste Management Plan alleged in this Complaint. The requirement to develop and submit a Waste Management Plan was detailed in the General Order. Further, the amended Order gave dischargers and extra calendar year to develop and submit the Plan. The Discharger was issued a Notice of Violation on 16 August 2010, which requested that the Plan be submitted as soon as possible to minimize liability. Since that time, the Discharger has failed to show any progress toward developing a Plan, and is therefore highly culpable for their failure to comply with the program.

b) *Cleanup and Cooperation: 1*

Discussion: The Discharger was given the neutral score of 1, which neither increases nor decreases the fine. Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the General Order, the Discharger continues to fail to comply. The violation of CWC section 13268, alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

c) *History of Violations: 1*

Discussion: The Discharger was given the score of 1 which neither increases nor decreases the fine. The Regional Board has no documentation of violations for the Discharger with respect to the failure to submit technical

Attachment A – ACL Complaint No. R5-2011-0578

and/or monitoring reports as required by an order issued pursuant to CWC section 13267(b).

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

- a) *Total Base Liability Amount: \$4,800* (Initial Liability (\$4,800) x Adjustments (1)(1)(1)).

Step 6. Ability to Pay and Continue in Business

- a) *Adjusted Combined Total Base Liability Amount: \$4,800*

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the Dairy, a significant asset, 2) the Discharger operates a dairy, an ongoing business that generates profits.

Based on the reasons discussed above, an ability to pay factor of 1 has been applied to the Combined Total Base Liability Amount.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount: \$4,800 + \$1,800 (Staff Costs) = \$6,600.*
- b) *Discussion:* The State and Regional Water Board has incurred \$1,800 in staff costs associated with the investigation and enforcement of the violations alleged herein. This represents approximately 12 hours of staff time devoted to investigating and drafting the complaint at \$150 an hour. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount. A further adjustment of the combined total base liability amount may be made if the Discharger submits a complete Waste Management Plan by **20 June 2011**. The amount of the combined total base liability amount may be reduced by \$2,000 for the completed report that is submitted to the Central Valley Water Board by **20 June 2011**. This reduction in the combined total base liability amount by \$2,000 accounts for enforcement efficiencies gained by the Discharger submitting the completed report.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit: \$5,000*

Attachment A – ACL Complaint No. R5-2011-0578

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the annual report and the Waste Management Plan. This is based on the current consulting costs of employing a certified engineer to conduct a site inspection and produce a Waste Management Plan (\$5,000). The adjusted total base liability amount of \$6,600 is more than at least 10% higher than the economic benefit amount (\$5,000) as required by the enforcement policy.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount: \$5,500*

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Regional Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint is \$5,000.

b) *Maximum Liability Amount: \$308,000*

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code Section 13367(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (308 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2008 and 2009 Annual Reports, and the Waste Management Plan is **\$6,600**. Attachment B is a spreadsheet that demonstrates the use of the penalty calculation methodology.